



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0212]

RIN 1625-AA09

Drawbridge Operation Regulation; St. Louis River (Duluth-Superior Harbor), between the towns of Duluth, MN and Superior, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the regulations that govern the drawbridges over the St. Louis River at Duluth-Superior Harbor. This waterway borders Minnesota and Wisconsin and is listed under Minnesota as St. Louis River (Duluth-Superior Harbor) and under Wisconsin as Duluth-Superior Harbor (St. Louis River) in the CFR. This proposed rule would affect both regulations. The owner of the Burlington Northern Grassy Point Railroad Bridge at mile 5.44 requested the regulation be updated to include permanent winter operating schedule. This proposed rule would also align river mile numbers with the United States Coast Pilot and delete bridges from the regulations that have been removed from the waterway and make the regulation easier to read and

less confusing to the mariner.

DATES: Comments and related material must reach the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2017-0212 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
LWD	Low Water Datum
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The St. Louis River flows eastward through Grassy Point into the St. Louis Bay and then into the west side of Superior Bay near its north end through Rices Point and Connors Point.

The Minnesota Channel, the dredged channel, follows the Minnesota shore for 2 miles west of Grassy Point before turning south. The buoys in the Minnesota Channel, are maintained from April 28 to December 7 each year when the waterway is typically ice free. The waterway is used by recreational and commercial vessels, including large freighters. Most vessels, including the larger freighters, avoid navigating the Minnesota Channel after December 7 when the buoys are decommissioned for the winter and ice makes navigation difficult.

The Burlington Northern Grassy Point Railroad Bridge at mile 5.44 is a center swing bridge that provides 175 feet of horizontal clearance in both draws and a vertical clearance of 12 feet in the closed position with an unlimited clearance in the open position at LWD. Fixed spans, outside of the channel limits, adjoining the bridge have a horizontal clearance of 64 feet and a vertical clearance of 13 feet at LWD. The bridge currently opens on signal, except that from January 1 through March 15 the draw opens on signal if at least 24 hours notice is provided.

The bridges listed in the regulation as the Grassy Point Bridge at mile 8.0 and the Arrow Head Bridge at mile 8.7, respectively, have been removed from the waterway.

The Duluth, Missabe & Iron Range combined Railroad and Highway Bridge, also known as the Oliver Bridge, at mile

13.91, is a center swing bridge with a horizontal clearance of 125 feet in both draws and a vertical clearance of 22 feet in the closed position at LWD. This bridge has been authorized to remain in the closed position for over 20 years but must return to operable condition when notified by the District Commander to do so.

III. Discussion of Proposed Rule

The bridge river/waterway mile numbers in the current regulation and the Coast Pilot 6 do not match. To avoid confusion this discussion only refers to the bridge mile numbers as published in the current Coast Pilot 6. The intent is to correct the mile numbers in this proposed rule so both the CFR and Coast Pilot 6 match.

The bridges referred to as the Grassy Point Bridge at mile 8.0 and the Arrow Head Bridge at mile 8.7 in the current regulation will be removed from the CFR because the bridges have been removed and are no longer crossing the waterway.

The drawbridge referred to as the Burlington Northern Railroad Bridge at mile 5.7 in the current regulation will be revised and referred to as the Burlington Northern Railroad Grassy Point Bridge at mile 5.44.

We reviewed the drawtender logs provided by the owners of the Burlington Northern Railroad Grassy Point Bridge and found the last vessel to request an opening in 2014 was an unknown tug boat on December 11, at 9 p.m., and in 2015 the last

vessel to request an opening was a Coast Guard vessel that requested an opening on December 6, at 2 p.m., and in 2016 the last vessel to request an opening was a Coast Guard vessel that requested an opening on December 2, at 5:45 p.m. Due to the lack of openings after December 7, we propose to allow the bridge to open if a 12-hour notice is given from December 15 through March 15 each year.

We propose to rename the Duluth, Missabe & Iron Range combined Railroad and Highway Bridge at mile 13.91 to the Canadian National Railroad and Highway Bridge to reflect the current ownership of the bridge, but continue to allow the bridge to remain in the closed position. The bridge will be required to return to operable condition when notified by the District Commander to do so.

The regulatory language for these drawbridges appear under two separate sections of 33 CFR; §117.669 St. Louis River (Duluth-Superior Harbor) and §117.1083 Duluth-Superior Harbor (St. Louis River). Our intent is to issue a Final Rule for §117.669 that includes all revised language for St. Louis River drawbridges, and revise §117.1083 by removing the regulatory language and referring readers to §117.669 Duluth-Superior Harbor (St. Louis River).

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking.

Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that vessels can still transit the bridge from December 15 through March 15 if a 12-hour advance notice of arrival is provided at a time of year when vessel traffic is at its lowest. All other changes to the regulation are administrative in nature and required to make the regulation consistent with other published navigation information.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during

rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator because the bridge will still open if advance notice is provided.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the

person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian

tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32)(e), of

the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your

material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the *Federal Register* (70 FR 15086).

Documents mentioned in this document, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.669 to read as follows:

§117.669 St. Louis River (Duluth-Superior Harbor).

(a) The draw of the Burlington Northern Grassy Point railroad Bridge, mile 5.44, shall open on signal except that, from December 15 through March 15 the draw shall open if at least 12-hour notice is given.

(b) The draw of the Canadian National Combined Railroad and Highway Bridge, mile 13.91, need not be opened for the passage of vessels. The owner shall return the draw to operable condition within a reasonable time when notified by the District Commander to do so.

3. Revise §117.1083 to read as follows:

§117.1083 Duluth-Superior Harbor (St. Louis River).

See §117.669 St. Louis River (Duluth-Superior Harbor), listed under Minnesota.

Dated: March 31, 2017.

J. E. Ryan,

Rear Admiral, U.S. Coast Guard,

Commander, Ninth Coast Guard District.

[FR Doc. 2017-07907 Filed: 4/18/2017 8:45 am; Publication Date: 4/19/2017]